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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,344	10/24/2005	Colin Brown	102790-134(30078 US)	5360
27389 7590 06/09/2009 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/554,344	Applicant(s) BROWN ET AL.	
	Examiner MONZER R. CHORBAJI	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This non-final action is in response to the RCE received on 5/20/09

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ananth et al (US 2003/0005620 A1) in view of Walsh (U.S.P.N. 2,616,759).

Regarding claim 1, Ananth discloses a dispensing device (see figure 1) for dispensing a volatile material to an ambient environment (paragraph 0003) comprising: a refill (figure 1:12, 16, and 18) which includes a reservoir (figure 1:12) containing a volatile liquid (paragraph 0015), and a porous wick (figure 1:16 and paragraph 0036) having a lower portion (figure 1:28) extending within the reservoir and adapted to be in fluid communication with said volatile liquid within the reservoir and an upper portion (figure 8:26) extending outside of the reservoir and adapted to be in fluid communication with an ambient environment, wherein the upper portion of the porous wick has a shaped recess (figure 8:32); and, a housing element (figure 1:30 and paragraph 0046) adapted to engage the shaped recess (sleeve 30 engages the shaped recess 32 by enclosing its outer walls and by controlling its evaporation rate as explained in paragraph 0041) in the upper portion of the porous wick when the dispensing device is assembled.

Ananth fails to teach a cover portion adapted to engage within the shaped recess.

Walsh discloses a device for emanating volatile material to the atmosphere (col.1, lines 1-6) having a cover portion (considered the unlabeled top surface of cap 12 as shown in figure 2) in combination with a connecting member (figure 2:13 and 12) that engages within the shaped recess (unlabeled recess within wick 11 where the wick is connected to cap 2 through connection member 13, 21 and 23 as shown in figure 2).

The connection member 13 engages within the shaped recess of wick 11 as shown in figure 2) in order to simplify converting the device between open and closed conditions (col.1, lines 16-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device in Ananth with the cover/connecting member combination in order to simplify converting the device between open and closed conditions as explained by Walsh (col.1, lines 16-18).

Regarding claim 2, Ananth discloses a process (paragraph 0051) for preventing the use of inappropriate refills (the unlabeled diameter of cap 18 is considered to insure that the use of inappropriate size of reservoir 12 is prevented) in an air treatment device which comprises the step of providing: a refill device (figure 1:12, 16, and 18) comprising a shaped recess (figure 8:32) in the upper portion of a porous wick (figure 6:16), and a housing element (figure 1:30 and paragraph 0046) adapted to engage the shaped recess (sleeve 30 engages the shaped recess 32 by enclosing its outer walls and by controlling its evaporation rate as explained in paragraph 0041) when the dispensing device is assembled.

Ananth fails to teach a cover portion adapted to engage within the shaped recess.

Walsh discloses a device and a method (col.3, lines 48-70) for emanating volatile material to the atmosphere (col.1, lines 1-6) having a cover portion (considered the unlabeled top surface of cap 12 as shown in figure 2) in combination with a connecting member (figure 2:13 and 12) that engages within the shaped recess (unlabeled recess within wick 11 where the wick is connected to cap 2 through connection member 13, 21

and 23 as shown in figure 2. The connection member 13 engages within the shaped recess of wick 11 as shown in figure 2) in order to simplify converting the device between open and closed conditions (col.1, lines 16-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the process in Ananth with the cover/connecting member combination in order to simplify converting the device between open and closed conditions as explained by Walsh (col.1, lines 16-18).

Regarding claim 3, Ananth discloses that the shaped recess of the wick defines a cavity (figure 8:32) having an open end (unlabeled open end of cavity 32 in figure 8), and a bottom end (unlabeled bottom end of cavity 32 in figure 8) within the upper portion of the porous wick (16).

Regarding claims 4-5, Ananth shows a shaped recess (32) that is adjacent to the top end of the wick and further discloses that the shaped recess (32) of the wick can be configured in any number of other different shapes (paragraph 0046). As such one of ordinary skill in the art reading the teaching of Ananth would readily recognize that a shaped recess having a tapered region would result in enlarging the evaporation surface of the liquid present within the recess leading to an increased initial burst of volatilized fragrance.

Regarding claim 6, Ananth shows that the shaped recess (32) of the wick defines a cavity having unlabeled open end adjacent the top end of the wick and a cylindrical region (unlabeled cylindrical region of cavity 32 in figure 8) extending downwardly from the unlabeled upper end of the cavity. In addition, Ananth discloses that the shaped

recess (32) of the wick can be configured in any number of other different shapes (paragraph 0046). As such one of ordinary skill in the art reading the teaching of Ananth would readily recognize that a shaped recess having a tapered region would result in enlarging the evaporation surface of the liquid present within the recess leading to an increased initial burst of volatilized fragrance.

Regarding claim 7, Ananth discloses that the shaped recess (32) terminates at a bottom end (unlabeled bottom of the cylindrical region of cavity 32 in figure 8) terminating the cylindrical region of the shaped recess.

Regarding claim 8, Ananth discloses a recess (32) having cylindrical shape that extends from the top end of the wick where the cylindrical shape recess has unlabeled central axis that is concentric with the central axis of the wick. In addition, Ananth discloses that the shaped recess (32) of the wick can be configured in any number of other different shapes (paragraph 0046). As such one of ordinary skill in the art reading the teaching of Ananth would readily recognize that a shaped recess having a tapered region would result in enlarging the evaporation surface of the liquid present within the recess leading to an increased initial burst of volatilized fragrance.

Regarding claim 9, Ananth discloses that the shaped recess (32) of the wick is a channel (unlabeled shape of cavity 32 in figure 8 resembles a channel) extending through the upper portion (26) of the wick.

Regarding claim 10, Ananth discloses that the shaped recess (32) of the wick includes one channel (unlabeled inner walls of channel 32 in figure 8) that extends through the upper end portion of the wick. In addition, Ananth discloses that the shaped

recess (32) of the wick can be configured in any number of other different shapes (paragraph 0046). As such one of ordinary skill in the art reading the teaching of Ananth would readily recognize that a shaped recess having two intersecting channels extending through the upper end of the wick would result in enlarging the evaporation surface of the liquid present within the recess leading to an increased initial burst of volatilized fragrance.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ananth et al (US 2003/0005620 A1) in view of Walsh (U.S.P.N. 2,616,759) as applied to claim 1 and further in view of Demarest et al (U.S.P.N. 6,361,752).

Ananth and Walsh fail to teach using a fan. Demarest dispenses volatile material from a reservoir (col.1, lines 40-45) through a wick using a fan (figure 7:108 and 126) in order to move air across the material and blow the resultant vapor into the surrounding environment (col.1, lines 49-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the modified device in Ananth/Walsh with the fan in order to move air across the material and blow the resultant vapor into the surrounding environment as taught by Demarest (col.1, lines 49-51).

Response to Arguments

6. Applicant's arguments with respect to amended claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

All of Applicants' arguments on pages 6-10 of the Remarks are addressing the newly added features, which have been met based on the new grounds of rejections as shown above.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571)272-1271. The examiner can normally be reached on M-F 9:00-5:30.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. R. C./

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797